IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

W.P.C.T 22 of 2022

The Union of India & Ors.
Vs.
Fatah Chand Nagar & Ors.

Appearance:

For the Petitioners/UoI	:	**Mr. Surajit Samanta, Adv.** **Mr. Rajarshi Halder, Adv.** **Mr. Chirantan Sarkar, Adv.** **Mr. Niraj Kumar Singh, Adv.**
For the Respondents	:	**Mr. Bharat Bhusan, Adv.** **Mr. Atindranath Mishra, Adv.** **Ms. Aparajita Ghosh, Adv.**
Judgment On	:	**20.04.2023**

Harish Tandon, J.:

The pivotal point raised in the instant writ petition at the behest of the writ petitioner, the Union of India, relates to the competence of an authority conferred upon the Financial Advisor and Chief Executive Officer (in-charge) to act as a commissioner to inflict the penalty by way of a compulsory retirement of the respondent in a disciplinary proceeding.

In order to have the clarity in the points indicated above, the salient facts emerged from the record are required to be adumbrated as under:

(i) The respondent initially joined Military Engineering Services under the Ministry of Defence on 9th August, 1982 and remained in the said department till 1993. The respondent was subsequently appointed in Central Bee Research Institute, Pune on deputation with effect from 25th June, 1993 which was a Training Institute of Khadi and Village Industries Commission and such deputation was extended from time to time until the month of August, 1995 when he was transferred to the Institute of Renewable Energy, Nashik under the Ministry of Non-Conventional Energy Resources of Khadi and Village Industries Commission. His services were regularized and he was appointed to the post of Assistant Director of Khadi and Village Industries Commission.

(ii) A tender Committee under his convenorship was constituted for undertaking renovation and repair works at Trimbak Vidya Mandir, Nashik. The petitioner was later transferred to the J. B. Central Research Institute at Wardha and remained there till the month of November, 2003.

(iii) An FIR was lodged against the petitioner and other persons on the basis of an enquiry conducted by the CBI on 4th February, 2000 alleging the commission of an offence punishable under Section 120B read with Section 420 of the Indian Penal Code and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

(iv) The petitioner was placed under suspension vide Memo dated 10th February, 2000 under Regulation 23 of the Khadi and Village Industries Commission Employees (Classification, Control and Appeal) Regulations which was later on withdrawn on 3rd September, 2002.

(v) By a Memo dated 10th November, 2000 the responder was served with the Charge-sheet alleging the misconduct and an enquiry is contemplated under the Khadi and Village Industries Commission Employees (Conduct, Discipline and Appeal) Regulation, 1961.

(vi) Pursuant to the initiation of the disciplinary proceeding several steps were taken thereunder and the resolutions were passed on the stand of the respondent which ultimately cultimated into a final order vide Memo dated 21st March, 2005 imposing punishment of compulsory retirement.

(vii) An appeal was preferred to the appellate Authority i.e., the Hon'ble Minister, the Ministry of Micro, Small and Medium Enterprises taking up technical plea that the penalty imposed by one Smt. Maya Sinha who was a Financial Advisor and was functioning as the Chief Executive Officer, Official-in-Charge and also discharging the function of Commissioner is holding the subordinate posts and therefore, not competent to impose major penalty.

A little prelude to the ultimate stand taken by the respondent is required to be recapitulated because of the event having taken place in relation to the said Commission. By virtue of a Notification dated 14th October, 2004 issued by the Ministry of Agro and Rural Industries, Government of India, the Central

Government decided to dissolve the Khadi and Village Industries Commission established under Sub-Section 1 of Section 4 of the Khadi and Village Industries Commission Act, 1956 with effect from the said date. The said Notification further provides that all properties and funds which were immediately before the date of dissolution of the Khadi and Village Industries Commission shall henceforth vest in the Central Government and all the members including the Chairman of the Khadi and Village Industries Commission shall vacate the respective offices.

Consequent upon the dissolution of the Khadi and Village Industries Commission, an order of the even date was issued by the Central Government constituting an authority in the name and style of "Commissioner for Khadi and Village Industries" and Smt. Maya Sinha, the Financial Advisor and the Chief Executive Officer (in-Charge) of the said Commission to discharge the functions of the Commissioner for Khadi and Village Industries, Mumbai till further order in addition to the current charge being handled by the said officer. A further resolution was taken by the Government of India, the Ministry of Agro and Rural Industries on the even date having felt necessity to continue all existing policies, programmes, schemes and all other related activities on the same terms and conditions as were being implemented by the erstwhile Commission before its dissolution, wherein it was resolved that the Chief Executive Officer, the Financial Advisor and all other employees of the erstwhile Commission will continue to hold the office and shall enjoy the same status in regard to the service matters as they were having at the time of dissolution of the Commission and shall henceforth function under the overall supervision and control of the Commissioner for Khadi and Village Industries.

The Commissioner was further empowered to appoint such other officers and staffs as considered necessary for efficient functioning subject to the prior approval of the Central Government. The Commissioner was also permitted to exercise of powers in the matters of promotion, loans and advances, leave, conduct of its officers and staffs as per the existing applicable Rules prevalent at the date of resolution of the said Commission .

Since the said Maya Sinha, who was admittedly holding the post of Finance Advisor and discharging the function of the Chief Executive Officer (in-Charge) and also discharge the function of a Commissioner, the challenge to an imposition of the punishment by way of compulsory retirement is made on the ground that she being a subordinate officer to the post of Assistant Director, is not competent to impose such major penalty. Ultimately, the Tribunal was approached and the aforesaid point was taken by the respondent which had been accepted and the penalty so imposed was quashed and the matter was remitted to the authorities to act in accordance with law.

The learned Advocate appearing for the Union of India submits that the moment the said Maya Sinha was conferred a power to act as a Commissioner and under the relevant rules, the said Commissioner is a competent authority, the order imposing the major penalty cannot be faulted. The attention is drawn to the schedule appended to the said Rules to support the aforesaid contention that the appointing authority of the Assistant Director is a Chief Executive Officer and the authority to impose all the penalties including major or minor is conferred upon the said Chief Executive Officer and the said Maya Sinha who was also discharging the functions and duties of the Chief Executive Officer is competent to impose the penalty. It is further argued that the appellate authority, indicated in the said schedule, is a Chairman and therefore, if the appellate authority has concurred with the penalty imposed upon the respondent, such imposition cannot be interfered with as it would be deemed to have been passed by an authority under the relevant Rules.

On the other hand, the respondent contends that there is a distinction between discharging the duties and functions in the capacity of the Chief Executive Officer or the Commissioner but it is totally different when such authorities appointed to such posts become a superior authority for the purpose of imposition of penalties. It is arduously submitted that several correspondences as well as the opinion of the different authorities would indicate that the order imposing the major penalty by way of compulsory retirement passed by the Chief Executive Officer is illegal and void being contrary to the relevant Rules which admittedly governed the service conditions of the respondent. It is further submitted that the Tribunal after taking into consideration the various Memorandum and the office notes including the opinion expressed by the Assistant Legal Advisor correctly arrived at the decision that the impugned order imposing penalty of compulsory retirement is bad and invalid.

On the backdrop of the aforesaid facts discerned from the record, let us examine whether there is any ground warranting the interference of the order of the Tribunal. As indicated above, the earlier Commission was dissolved on 14.10.2004 and the post of the Commissioner was created and Smt. Maya Sinha who was the Financial Advisor of the Commission and was officiating as the Chief Executive Officer was permitted to discharge the duties and functions of the Commissioner. It also appears from the record that the said

Commission was re-established and put in place on and from 18.6.2006. It is not in dispute that the petitioner was holding a post of an Assistant Director prior to such dissolution and in view of the resolution dated 14th October, 2004 he was permitted to continue in such posts and discharged the duties and functions admissible thereto. The moment the position of the petitioner has not been disturbed as evident from the resolution dated 14th October, 2004 even if the Commission was re-constituted his position would not be regarded as inferior to the post of the Assistant Director. Admittedly, the schedule appended to the regulation indicating the appointing authority, the authority competent to impose penalties and the appellate authority are to be seen in order to find out whether the said Maya Sinha who was admittedly holding the post of a Financial Advisor and discharging the function of the Chief Executive Officer or to act as a Commissioner is competent to impose the major penalty.

The said schedule indicates that the Chief Executive Officer is the appointing authority and a competent authority to impose all penalties in relation to an officer holding the post of Assistant Director. It would be relevant to consider the observations made by the Under Secretary Ministry of Micro, Small and Medium Enterprises, Government of India in an appeal preferred against the final order imposing the penalty by way of compulsory retirement. The said appeal was preferred to the Hon'ble Minister and a decision was taken that since the Commissioner of Khadi and Village Industries Commission (in short, 'KVIC') had not been delegated any disciplinary powers to initiate action under the KVIC (CCA) Regulations, 2003, the order imposing penalty of compulsory retirement of the respondent passed by the erstwhile Commissioner on 21st March, 2005 was without jurisdiction and therefore void *ab initio*. It was further indicated that after the reconstitution of the Commission the matter may be examined *de novo* on its merit in the following:

> ***"7. As Commissioner, KVIC had not been delegated any disciplinary powers to initiate action under KVIC Employees (CCA) Regulations, 2003, the order imposing penalty of compulsory retirement on Shri F.C. Nagar which was passed by the then Commissioner, KVIC on 21.3.2005, was without jurisdiction and was void 'ab-initio'.***
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> ***8. As the Appellate order now proposed to be issued has to replace the punishment order, separate orders would need to be issued by KVIC. It would however be open to the Commission to examine the case de novo on its merits for any appropriate action as deemed fit under the powers delegated to the Competent Authority under the KVIC Employees (CCA) Regulations, 2003, as amended under Notification No. GSR No. 549 (E) dated 12.9.2006."***

The matter was placed before the Minister and it was indicated that the same is merely an information which was duly accepted by the concerned officers. Further a legal advice was also sought from the Assistant Legal Advisor who opined that the order dated 21st March, 2005 is passed by an authority not competent in this regard and therefore cannot be tenable in law. The relevant excerpts are quoted as under:

> ***"19. In view of the above stated legal position, we concur with the views of DOPT that major penalty order as issued vide order dated***

21.3.2005 appears to be questionable as it was not issued by the competent authority. Therefore, the order is not tenable in law."

It is relevant to consider the general instruction issued by MHA dated 24.1.1963 where the Law Ministry advised that an officer appointed to perform the current duties of the department can only exercise the administrative and financial powers vested in the full-fledged incumbent of the post but cannot exercise the Statutory powers unless such powers are derived directly from the Act of Parliament or the Rules, Regulations or bye-laws made under the Constitution of India. Such being the position mere delegation of powers to discharge the duties and functions of the Chief Executive Officer without holding the aforesaid substantial post does not bestow the statutory powers cast under the relevant Rules as it is only limited to an administrative as well as the financial powers to be exercised in order to secure the smooth functioning of the organization of the institution.

In ***Mysore S.R.T. Corpn. Vs. Mirja Khasim Ali Beg, reported in (1977) 2 SCC 457*** the Apex Court was considering a case where a conductor in the Road Transport Department of the erstwhile State of Hyderabad prior to coming in force of the State Reorganization Act, 1956 was subjected to a disciplinary proceeding for certain cash and ticket irregularities which resulted into a dismissal from service by the Divisional Controller of the Mysore Government Road Transport Department. The challenge was made on the ground that since the appointment has been made by the Superintendent, Road Transport Department of the erstwhile State of Hyderabad being a head of the Department, the dismissal from service could only be made by the head of the Mysore Government Road Transport Department i.e., the general manager and not by the Divisional Controller being subordinate to such an appointing authority. On the constitutional provisions contained under Article 311 (1) of the Constitution of India, the Apex Court held that the expression "Condition of service" being of wide import and the dismissal from service which falls within its contour, it is inconceivable that by any legislative provision or the Rule, such constitutional right can be taken away in the following:

> ***"The expression 'conditions of service' is an expression of wide import and the dismissal from service is a matter which falls within the conditions of service of public servants. Also it is not possible by means of any legislative provision or rule to take away the guarantee provided by Article 311 (1) of the Constitution and if any such legislative provision or rule lays down otherwise, it will clearly be ultra vires."***

The law as expounded in the above noted report leaves no ambiguity that the moment a government employee is subjected to any disciplinary proceeding, the penalty can only be imposed by an officer senior in rank and not a subordinate officer. Mere delegating the power to discharge the duties and functions of such superior officer by an officer inferior in the rank of the delinquent is only for the purpose of administrative convenience but not to undermine the constitutional provisions nor to exercise the statutory powers which can only be exercised by an authority holding a substantive post and not by a person merely officiating such post.

We thus do not find any infirmity and/or illegality in the impugned order.

The writ petition is dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree. **(Harish Tandon,J.)**

(Prasenjit Biswas, J.)